

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Suit No.1042 of 1983

M/s Haldyn Glass Works

Pvt. Ltd. .. Plaintiff

V/s

1. The Oriental Fire and
General Insurance co.Ltd.

2. Maharashtra State Financial
Corporation

3. State Bank of India ... Defendants

Shri Z.B.Kamdia i/b M/s Amarchand and Mangaldas and
S.A.Shroff for the plaintiffs

Shri R.V.Samuel for the defendant no.1

CORAM:S.R.SATHE, J.

DATED:24th Nov. 2005

ORAL JUDGMENT :-

1. The plaintiff company has filed this suit against the defendant no.1 the Oriental Fire and General Insurance Co. Ltd. for recovery of Rs.2,26,007/- being the amount of loss suffered by the plaintiff as a result of malicious and mischievous acts committed by their workmen working in production and quality control department, which loss according to the plaintiff is

covered under their riots and strike damage insurance policy and malicious damage endorsement, issued by defendant no.1.

2. The plaintiff's case in brief is that the plaintiff is a private limited company having their manufacturing of glass bottles factory situated at Goregaon (East) Mumbai. About 1000 workmen were working in their factory at the relevant time i.e. in the year 1981. The workmen had formed an union and forwarded a charter of demand. Thereafter there were meetings between the plaintiff and union's representatives. On 10-3-1981 the plaintiff's semi automatic furnace collapsed and hence they decided to close one furnace out of 4, permanently and accordingly issued a notice of closure under Section 25 FFA of the Industrial Dispute Act 1947. The union objected for the closure but an agreement regarding closure was arrived at after several meetings. However, in spite of that for other demands the discussions were going on. The union was insisting for introducing D.A. scheme along with increases in wages as well as payment of D.A. which was not agreeable to the plaintiffs and as such there was some dispute existing between plaintiff and the union.

3. The plaintiff company is manufacturing glass bottles on high speed automatic machines. Under the process, first the molten glass gob falls into the

blank mould and the same is manually removed by the workmen to the finishing mould where finally the finished bottles are formed. The workmen on the blank mould transfer the half blown bottles to the finishing moulds for forming finishing bottles. Thereafter the finished bottles are kept on conveyor for transferring tolehr by another workmen engaged for feeding into the lehr. As per second process the bottles are transferred from conveyor to the lehr immediately for annealing. The bottles pass through this lehr for a period of nearly three hours from where bottles are checked by the quality control manually and then the bottles are packed for sale. As such the workmen of the quality control department while inspecting/checking by picking up each bottle can maliciously damage the bottles instead of passing them for packing.

4. According to plaintiff during the period from 4-9-1981 to 10-9-1981 workmen of plaintiff's factory with malicious intention of causing loss to the plaintiff committed deliberately various acts of following nature:-

a) The workmen on the bottle forming machine wilfully did not close the machines/moulds to blow the molten glass properly in periodical intervals, which has resulted in the loss or production and they have wilfully thrown the

good bottles made by them.

b) The workmen also wilfully and with malicious intention threw the bottles which were good and usable otherwise and as a result it rendered a total loss.

c) The workmen who have to pass the bottles from the production conveyor to the lehr deliberately allowed the bottles to fall and break thereby resulting in a large scale destruction of bottles.

d) Bottles kept on the lehr for annealing were taken and thrown into the cullet box. Thus, the workmen engaged in process wilfully damaged the bottles.

As a result of above mentioned malicious and mischievous acts of the workmen during the period from 4-9-1981 to 10-9-1981 there was no production of usable and marketable products in the plaintiff's factory and thus the plaintiff suffered great loss. In fact when it was noticed by the plaintiff's manager that the workmen were resorting to such activities, plaintiff issued notice No.A/819 dated 5-9-1981 and appealed and warned the workmen to refrain from the aforesaid malicious acts. Copies of the said notice were sent to the various authorities including Police, Commissioner

of Labour etc. In spite of the same the situation continued. Gobs of half blown were allowed to fall around the machines and conveyors. Such acts of sabotage besides loss of production likely to result in dangerous consequences. Because of loss of production plaintiff tried to employ extra people in order to remove glasses around the machines but the office bearers of the union did not allow to employ other persons. Plaintiff on 7-9-1981 issued another notice and requested the workmen to desist from their illegal activities. Copies of the said notice were also sent to the Police and Commissioner of Labour. Plaintiffs also made a claim to the Secretary for Labour, Government of Maharashtra and informed about the malicious activities of the workmen and dangerous situation prevailing in the plaintiff's factory.

5. The process of manufacturing bottles was such that once it started functioning the process of production could not be halted in the middle of the process. The plaintiff company therefore consulted M/s General Glass Machinery Pvt. Ltd. and they also advised not to stop the factory or shut down the furnace and expressed that furnace commissioned by the plaintiff had yet 30 to 36 months of useful life and shutting down of the furnace may result in the serious consequences.

6. In view of the above position, the plaintiff company by its letter No.A/825 dated 8-9-1981 informed

the defendant no.1 Insurance Company about the aforesaid malicious acts on the part of the plaintiff workmen and also enclosed copies of all the notices issued by the plaintiff till then about the above mentioned acts of the workmen. The plaintiff company had taken 4 fire insurance policies dated 2-4-1981, 31-8-1981, 31-8-1981 and 2-4-1981 as Exh.A1 to A4 to the plaintiff. According to the plaintiff as a result of the said riots and strike and as per malicious damage endorsement the defendant insurance company was liable to make good the loss suffered by the plaintiff company as a result of the malicious acts committed by the workers. Plaintiff, therefore, informed the defendant insurance company about the situation prevailing in the factory. On receipt of the said letter the defendant no.1 appointed M/s Mehta and Padmsy Pvt. Ltd. Bombay to survey and assess the loss. The representative of M/s Mehta and Padmsy Pvt. Ltd. however visited the plaintiff's factory on 1-10-1981 and collected necessary information after inspecting the factory. They also collected record regarding the production of bottles every day and percentage of acceptance of bottles out of total quantity of bottles put in process. The plaintiff's claimed amount of Rs.2,72,328- towards their loss, however, the surveyors assessed the loss to the tune of Rs.1,78,939/- and represented to the plaintiff that if they want the claim to be settled expeditiously they should agree with the assessment made by the surveyors. As a result

of the said assurance given by the Surveyors the plaintiff agreed to the assessment done by the Surveyor.

7. According to the plaintiffs the loss suffered by the plaintiffs was fully covered under the riots, strike and malicious damage endorsement which runs as follows :-

"Attached to and forming part of the said policies. The said Malicious endorsement runs as follows :

In consideration of the payment of the sum of Rs.25,526/- additional premium, it is hereby agreed and declared that the insurance under the said RIOT AND STRIKE DAMAGE ENDORSEMENT shall extent to include MALICIOUS DAMAGE which for the purpose of this extension shall mean 'Loss of or damage to the property insured directly caused by the malicious act but excluding any omission of any kind of any persons (whether or not such act is committed in the course of any disturbance of the public peace) not being an act amounting to or committed in connection with an occurrence mentioned in special condition no.6, of the riot and strike damage endorsement".

. Said special condition no.6 is as follows :

This Insurance does not cover any loss or damage occasioned by or through or in consequence, directly or indirectly of any of the following occurrence, namely :-

a) War, invasion, act of foreign enemy, hostilities or war like operation (whether war be declared or not) civil war,

b) Mutiny, civil commotion assuming the proportion of or amounting to a popular rising military rising insurrection rebellion revolution military or usurped power or any act of any person acting on behalf of or in connection with any organisation with activities directed towards the overthrow by force of the Government de jure or de facto or to the influencing of it by terrorism or violence.

. In any action, suit or other proceeding where the Company alleges that by reason of the provisions of this condition any loss or damage is not covered by this insurance, this burden of proving that such loss or damage is covered shall be upon the insured.

8. After receipt of surveyor's report and claim made

by the plaintiff, the defendant insurance company informed the plaintiff that loss mentioned by the plaintiff and the surveyor does not fall within the cover granted under riot and strike damage and malicious damage endorsement. Accordingly, the defendant sent letter dated 25-5-1982 to the plaintiff. Thereafter some meetings took place between the plaintiff and officers of the defendant - Insurance company and defendant no.1 insurance company also referred the case to their Regional and Head office but they also took the stand that loss does not fall under the cover of riot and strike or malicious policy endorsement. The plaintiff therefore filed present suit and claimed the amount of Rs.2,26,007/- as mentioned above.

9. The plaintiffs impleaded defendant nos.2 and 3 as formal parties as the policies were issued in favour of the plaintiffs jointly with defendant nos.2 and 3. The plaintiff however did not claim any relief against the defendant nos.2 and 3.

10. The defendant no.1 filed its written statement and opposed the suit claim. They admitted that plaintiff had taken out 4 insurance policies as alleged in the plaint. They however, contended that they have no knowledge about the dispute between plaintiff management and the workmen working in the plaintiff's factory. The defendant no.1 denied the plaintiff's

case that workers of the plaintiff company committed malicious acts and thereby caused loss to the plaintiff. They also denied plaintiffs case that there was no production in the plaintiff's factory during the period from 4-9-1981 to 10-9-1981 as a result of the alleged acts of sabotage committed by the workmen. They also contended that dangerous consequences would not have arisen if the furnace would have been shut down. The defendant no.1 contended that they are not aware of the representation made by the surveyors to the plaintiff though they admitted that surveyors had quantified the loss at Rs.1,78,939/-. According to the defendant after considering the report of the surveyors they found that alleged loss was not covered under riots, strike and malicious damage, endorsement of the said policy and hence plaintiff's claim was rejected. The defendant further contended that under the endorsement of malicious damage, all the conditions and provisions of the riot and strike damage endorsement are applicable as if the said conditions are incorporated in malicious damage endorsement. Condition no.5(1)(a) and (b) incorporated in riot and strike damage endorsement says :-

This insurance does not cover :-

a) Loss of earning, loss by delay, loss of market or other consequential or indirect loss or damage of any kind or description whatsoever.

b) Loss of damage resulting from total or partial cessation of work or the retarding or interruption or cessation of any process or operation or omission of any kind.

11. The defendant no.1 also contended that for considering the alleged claim under malicious damage classification, the act of the employees should prima facie amount to an offence, but in the instant case the action of the employees was not amounting to an offence. If really the workmen had committed the alleged acts then as a prudent employer plaintiff would have taken all reasonable steps to protect the property and reported the matter to the Police but as the same had not happened, the defendant repudiated the plaintiff's claim. The defendant also denied plaintiff's claim with regard to the interest and contended that the plaintiffs have filed a false and vexatious suit. Hence on all these grounds the defendant no.1 prayed for dismissal of the suit.

12. On these pleadings this Court (Coram:S.U.Kamdar,J.) has framed the following issues. I have given my findings as mentioned against the same.

ISSUES

1. Whether the suit is barred

by the law of limitation? No

2. Whether the plaintiff proves that plaintiff is entitled to claim and receive any amount from the 1st defendant under the different insurance policies which are set out in para-3 of the plaint? Yes

3. Whether the plaintiff is entitled to a decree in the sum of Rs.2,26,007/- and interest thereon at the rate of 20% p.a. from the date of suit till payment and/or realisation?	Plaintiff is entitled for a decree in the sum of Rs.1,78,933/- and interest at the rate of 9% p.a. till decree and 6% p.a. from the date of decree.
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4. Whether any act as covered under the said insurance policies were ever committed from 4-9-1981 to 10-9-1981 as per para (8) of the plaint? Yes

5. Whether the 1st defendant proves that the plaintiff is not entitled to any claim under the insurance policies as alleged No

by the 1st defendant in para 19
of the written statement?

6. What reliefs? As stated in final order.

13. It is not in dispute that plaintiff company had taken 4 fire insurance policies from the defendant no.1 company. Admittedly, the copies of the policies which are produced by the plaintiff at pages 16A and 16B of their compilation and the original policy document produced by the defendant no.1 along with their compilation clearly indicate that policies were with riot and strike damage endorsement and malicious damage endorsement. Both these policies were in existence at the material time i.e. during the period from 10-10-1983 to 26-10-1983 when the alleged malicious acts were committed by the workmen in their factory. In order to succeed in this suit plaintiff has to prove that during the above mentioned period the workers acted with malicious intention of causing loss. Secondly, the plaintiff must prove that as a result of the said activities plaintiff suffered loss and thirdly they must prove that such loss is covered under malicious damage endorsement of their policy. In order to prove the above points the plaintiffs have examined witness N.D.Shetty, Managing director of the said company and produced certain documents. As against this in order to support their contention the defendant no.1 has examined witness P.B.Zariwala an employee of

M/s Mehta and Padamsi Pvt. Ltd. who carried out survey in the instant case and witness Gaurang Pandya, Divisional Manager of the defendant no.1 Insurance Company and produced certain documents.

14. In order to prove that workers of the plaintiff company deliberately with an intention to cause loss to the plaintiff, committed certain acts such as rejecting good quality semi formed bottles and finished bottles by throwing the same into the reject bins, placing half blown and semi finished bottles in the lehr etc/ and it resulted substantial reduction in the production and consequently caused damage, the plaintiff company has filed affidavit of their employee Narendra D. Shetty, Managing Director. He has categorically stated that during the year 1981 there was a dispute between the plaintiff company and workers union of the said company. Workers had given charter demand and management of the plaintiff company was not in a position to fulfil their demands. As a result of the same the workers were adopting 'go slow' tactics and indulging in shouting slogans, hootings, booing, cat calling etc. He has also stated that when he was present in the factory he noticed following acts :

i. workers rejecting good quality semi formed bottles and finished bottles by throwing the same into the reject bins;

ii. half blown and semi finished bottles being placed in the lehr (were only finished bottles were to be placed)

iii. workers piling up waste bins with both defective and properly formed bottles with the intention of causing pile ups which would interfere with regular production and lead to further losses;

iv. jamming of the lehr belt by failing to move bottles, causing heavy accumulation and thereby not letting the lehr belt and the gears move freely.

v. the workers of quality control department, with malicious intention, rejected good bottles as bad bottles by throwing them in the reject bins.

vi. the workers of quality control department, with malicious intention, threw good/useable bottles resulting in breakage of such bottles.

vii. the workers willfully did not close machines/moulds with the result that the molten glass could not be blown properly in periodical intervals resulting in loss of productions.

15. The evidence of this witness is in fact not shattered in the cross examination. It is true that the plaintiff has not examined any other independent

witness to prove that at the material time i.e. during period from 2nd shift of 4-9-1981 to 10-9-1981 the workers were indulging in the above activities. However, at the same time we cannot ignore the fact that when all the workers in the said factory were against the management and were in fact adopting 'go slow' tactics and other illegal activities it was not possible for the plaintiff to adduce any independent evidence in that behalf particularly when all the above mentioned alleged activities had taken place inside the factory premises.

16. Mr.Samuel, learned Advocate for the defendant no.1 submitted that very fact that the plaintiff did not make any complaint about the illegal activities of the workers to the police and also did not issue memo to any particular worker indicates that the workers must not have committed alleged acts of destruction of bottles etc with malicious intention and that is why the plaintiff had not made any complaint. It is true that the plaintiff has not filed any regular complaint as such with Police by going to the Police Station, however, at the same time plaintiff's witness has stated that they had informed Police about the illegal activities that were carried out by the workers. He has stated that in respect of said illegal activities the plaintiff had given notice to all the workers and the said notice was displayed on the notice board of the factory on 5-9-1981. It is nowhere suggested to

him that no such notice was published. He has also stated that copies of the said notice were given to various authorities including police. So, it is not that plaintiff had not reported the matter to the Police. Merely because regular complaint was not lodged and offence was not registered we cannot jump to the conclusion that plaintiff's case is false.

17. It is pertinent to note that plaintiff has produced notice dated 5-9-1981. In this notice it is clearly mentioned :

"The management regrets to note that the production workmen (which expression shall include workmen of the quality control department in all the shifts, since the 2nd shift of 4th September, 1981 and onwards in concert, under common understanding and in combination with one another have launched the most pernicious method and dishonest act of go slow wilfully and deliberately under normal working conditions. As a result of the go slow, the normal output has been deliberately brought down by over 70%. It is reported that coupled with go slow, the production workmen are also indulging into various unfair labour practices and other illegal act in the form of shouting slogans, hootings, booing, cat calling and the like and thus creating commotion and scene in and around the factory premises. It is further reported that in the quality control

department, solely with malicious intent of causing wrongful loss of revenue to the Company, even good bottles are discarded as bad bottles in an organised manner. It is also reported that moulds of the glass manufacturing machines are being damaged wilfully and deliberately. The salutary advice given by the supervisory staff and other management personnel to abandon the present go slow and to desist from commission of various unfair labour practices and other illegal acts have fallen on their deaf ears and on the contrary, the workmen have intensified the go slow as well as other unfair labour practices and illegal acts since the 5th instant. The workmen are, therefore, once again advised to abandon the go slow and to desist from commission of unfair labour practices and other illegal acts without any further loss of time and restore normal production and ensure normal working and observe normal discipline whilst on duty".

18. Not only that but it appears that even subsequently on 7-9-1981 the plaintiff had issued other 2 notices and made an appeal to the workers not to indulge in any illegal activities and restore normalcy in discipline as well as production. It has come on record that at the relevant time there was dispute between the plaintiff and its workmen. If really the workers had not committed such illegal and malicious acts and caused damage to the plaintiff's property the

plaintiff would not have issued such notice and displayed it on the notice board, because that would have in fact created further trouble. However, the very fact that the plaintiff issued notice and displayed the same on notice board indicate that such illegal and mischievous acts were committed by the workers and as a result of the same the plaintiff's property was damaged and hence the plaintiff boldly issued the notice and also made appeal to the workers that they should restore the normalcy. Merely because plaintiff's employee has given evidence about the same and there is no corroboration from any other witness I am not inclined to disbelieve the plaintiff's witness in this behalf. It is worth to note that plaintiff has even informed to the Secretary for Labour, Government of Maharashtra about the activities of the workmen. There is another important aspect which shows that at the relevant time the plaintiff had no intention to claim any damage from the defendant no.1 Insurance company. If we see the notice dated 5-9-1981 as well as 7-9-1981 and letter to the Secretary, Labour Department, Government of Maharashtra we find that though plaintiff informed various authorities about the alleged acts of workers, at that time, they did not even forward the copy of notice to the Insurance company. That also indicates that primary object and intention of the plaintiff at that juncture was to inform concerned authorities and to secure normalcy. If really they had an intention to create false

evidence by publishing notice then certainly copies of the said notices dated 5-9-1981 and 7-9-1981 would have been forwarded by the plaintiff to the Insurance Company. So, when plaintiff was dealing with the situation in such manner we cannot expect any other independent evidence to prove that at the relevant time the workers were indulging illegal activities.

19. Much is made about the fact that in the notice dated 7-9-1981, copy of which is forwarded to various authorities the plaintiff had not specifically mentioned that workers were deliberately and with an intention to cause loss to the plaintiff, destroying and discarding good bottles as bad bottles in an organised manner. However, it is specifically mentioned in the said notices that gobs of glass half blown were allowed to fall around the machines and conveyors. This act tantamounts to sabotage which may be the cause of very heavy damage to the machines thereby putting the machines out of commission. What is more to be noted is, in both the notices dated 7-9-1981 plaintiff had specifically made reference to their earlier notice No.A/819 dated 5-9-1981 in which they had given details of the illegal acts committed by the workers. When such was the position there was no need for the plaintiff again to mention specifically alleged acts of the workers in the notice dated 7-9-1981. Incidentally, it must also be noted that even for making a claim against the Insurance company there

is no rule that plaintiff must have filed a complaint with police about the alleged activities of the workers. It is not even necessary for the plaintiff to show that by committing particular acts the workers had in fact committed an offence. Whether the acts committed by the workers amount to an offence or not is not the question. Ultimately, what is to be seen is whether the acts of the workers have caused loss or damage to the property insured and it was the result of the malicious acts committed by the workers or by any other person. So, merely because the plaintiff has not issued any memo or taken stern action against any particular worker and not filed regular criminal complaint with Police, it cannot be said that the plaintiffs have failed to prove their case.

20. It has come on record that the plaintiff wrote a letter dated 8-9-1981 to Insurance company and informed them about the activities carried out by the workers and consequential loss suffered by them. Though in the said notice dated 8-9-1981 there is no specific mention of the malicious acts committed by the workers the plaintiff had enclosed copies of various notices and letters issued by them since 5-9-1981 and had specifically informed the defendant no.1 that from the said notices they would gather that acts of the workers tantamount to sabotage and it is going on ever since 5-9-1981 and as a result of the same the production has practically stopped. So, on receipt of the said notice

the defendant no.1 could have sent its representative immediately to the plaintiff's factory in order to ascertain whether the information given by the plaintiff is correct or not. However, we find that though the defendant no.1 received the letter dated 8-9-1981 immediately, it is only after about 8 days defendant no.1 informed the plaintiff that they have appointed M/s Mehta and Padamsy Pvt. Ltd. Bombay as a surveyors and assessors to assess the loss. What is more to be noted is that it is an admitted fact that the said survey visited the plaintiff's factory for the first time on 1-10-1981. So due weightage shall have to be given to the fact that though particulars were provided to the defendant no.1 to see the actual position at the plaintiff's premises and to ascertain whether illegal activities are actually being committed and whether loss has been caused, the defendant no.1 did not avail the said opportunity. so, under such circumstances it cannot be said that the plaintiff's evidence is not trustworthy. It is an admitted fact that after the representative of M/s Mehta and Padamsy Pvt. Ltd visited the plaintiff's factory on 1-10-1981 they collected the necessary information and also made queries with the management and also perused their record. If really the plaintiff would not have suffered any loss then the Surveyors would have made a report to that effect but on the contrary if we see the Surveyor's report dated 29-12-1981 we find that they verified daily production and ascertained rough quantum

of bottles broken and destroyed. It is true that in their report the surveyors observed that as per their opinion the bottles had broken due to omission of work by the workers. In fact at that juncture there was absolutely no concrete evidence before them to draw such conclusion or give such opinion. The fact remains that even according to the surveyors bottles were broken and loss was caused to the plaintiff. Thus having regard to all other circumstances, evidence on record and considering preponderance of probabilities I have no hesitation to hold that the plaintiff has proved that during the period from 2nd shift of 4-9-1981 or atleast from 5-9-1981 to 10-9-1981 the workers in plaintiff's factory with an intention to cause damage to plaintiff, committed malicious and mischievous acts mentioned earlier by the Plaintiff's witness and thereby caused damage to the plaintiff's property.

21. A feeble attempt has been made on the part of defendant no.1 to show that bottles were broken not as a result of particular overacts committed by the workers but because the workers working on the production conveyor did not lift the bottles and put them on the lehr and as a result the bottles dropped on the floor. Similarly, the sorters at the end of lehr conveyors were not quick enough to pick up the bottles for sorting purpose and bottles dropped on the floor and the same is not covered under the policy in

question. For this purpose the learned Advocate for the defendant has placed reliance on the malicious damage endorsement attached to and forming part of the policy taken by the plaintiff. the said endorsement is as follows :-

In consideration of the payment of the sum of Rs... additional premium it is hereby agreed and declared that the insurance under the said RIOT AND STRIKE DAMAGE ENDORSEMENT shall extend to include MALICIOUS DAMAGE which for the purpose of this extension shall mean

Loss of or damage to the property insured directly caused by the malicious act but excluding any omission of any kind of any person (whether or not such act is committed in the course of a disturbance of the public place) not being an act amounting to or committed in connection with an occurrence mentioned in Special Condition NO.6 of the said Riot and Strike Damage Endorsement".
(Special condition no.6)

22. In the instant case it has come in the surveyor's report that if the sorters working on the production conveyor do not lift the bottles and put them on lehr the bottles would drop on the floor. Similarly if the

sorters at the end of lehr conveyor are not quick enough to put up the bottles for sorting purpose the bottles would drop on the floor. So, it was argued that as there was omission on the part of sorters to lift the bottles at the end of lehr conveyors, bottles have broken and damage has been caused. However, it must be noted that conduct of the workers in not lifting the bottles at the proper stage cannot be treated as simplicitor omission as contemplated under above mentioned malicious damage endorsement. On the contrary evidence shows that workers deliberately acted in particular manner because they were sure that as a result of their conduct bottles would fall down and loss would be caused to the plaintiff. So, I do not think that defendants are entitled to take benefit under the above mentioned endorsement. There is no substance in the arguments advanced by the learned Advocate for the defendant that loss has been caused as a result of omission on the part of the workers. In fact surveyors have also specifically stated in their report that it was in fact easy for the workers to cause loss to the plaintiff's property and destroy the bottles without using any force or violation and without being caught while throwing the bottles by resorting to the method of not lifting the bottles at the end of lehr conveyor. Thus, we find that the sorters and workers deliberately picked up even good bottles and threw the same as defective and thereby committed mischievous acts and caused loss to the

plaintiff. From the plaintiff's evidence as well as from the surveyors report it is very clear that bottles were actually damaged and the surveyors have in fact assessed the loss on the basis of the record of production of earlier period produced by the plaintiff. It is not the case of the defendant no.1 that record that was produced before the surveyor on the basis of which he assessed the loss was not correct or that it was fabricated. So, under the aforesaid circumstances the assessment which has been made by the defendant no.1's assessor has to be accepted.

23. It is tried to be argued on behalf of the defendants no.1 that even the surveyor had reported that loss in question cannot be covered by the policy taken by the plaintiff viz. riot and strike damage endorsement and malicious damage endorsement. However, if we peruse the report of the surveyor dated 29-12-1981 it is very clear that surveyor has nowhere mentioned that damage in the instant case is not covered by the riot and strike damage endorsement and/or by malicious damage endorsement. On the contrary, the surveyor has specifically mentioned that question of liability is left to the insurer to be decided by them as they deem proper. So, the defendants cannot say that they rejected the plaintiff's claim because the surveyor had suggested accordingly. In my opinion, the plaintiff has established that loss caused to the plaintiff was due

to the malicious acts committed by the workmen and as such the damage is covered under malicious damage endorsement. It is true that conditions which are applicable to the riot and strike damage endorsement are also applicable to the malicious damage endorsement but then even considering the said contention it is very clear that the present case does not fall under the condition no.5 or 6 so as to hold that the damage caused to the plaintiff was due to omission or cessation of work on the part of workers and is not covered by the insurance policy.

24. Though there is issue with regard to limitation, it has not be pressed by the learned advocate for defendant. Moreover, if we take into consideration the period of occurrence of the incident which is 4-9-1981 to 10-9-1981, the date when plaintiff first informed the defendant no.1 about the incident i.e. 8-9-1981 the submission of report dated 29-12-1981, letter issued by the plaintiff to the defendant claiming the said amount of Rs.1,78,939/- which is dated 23-12-1982 and the date of filing of the suit i.e. 18-4-1983, it is very clear that the suit is not at all barred by law of limitation.

25. It must be noted that defendants have in fact not seriously challenged the quantum of claim. The challenge was mainly on the ground that malicious activities of workers are not proved and alleged damage

is not covered by the policy in question. I have already mentioned above that there is no substance in the contention of the defendants in this behalf and from the evidence of the plaintiff and report of the Surveyor it is proved that plaintiff sustained loss to the tune of Rs.1,78,939/- and plaintiffs are entitled to get the same from defendant no.1.

26. In view of the above, I pass the following order:

ORDER

i. The defendant no.1 to pay plaintiff Rs.1,78,933/- and interest on the said amount at the rate of 9% p.a. from the date of the suit till today and future interest on Rs.1,78,933/- at the rate of 6% p.a. from the date of decree till realisation of the amount. The defendant no.1 to pay to the plaintiff the proportionate costs of this suit and bear their own. The suit against defendant nos.2 and 3 stands dismissed with no order as to costs.

(S.R.SATHE, J.)